THE HON'BLE Ms. JUSTICE G. ROHINI

W.P.No.10086 OF 2005

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ORDER:

When vacate petition filed by the second respondent is listed, with the consent of the learned counsel for both parties, the main Writ Petition itself is heard and decided.

The main Writ Petition is filed seeking a declaration that the action of the 2nd respondent-Temple, in proposing to auction the leasehold rights of the land situated in Sy.Nos.222, 223 and 224 of Nellipaka Banjara Village, Aswapuram Mandal, Khammam District, admeasuring Ac.6.50 cents of dry land, is arbitrary and illegal.

It is not in dispute that the said land belongs to the 2nd respondent-Temple. It is also not in dispute that the father of the Writ Petitioner by name Akkina Surya Rao was the cultivating tenant in respect of the said land. It appears that the lease in his favour was terminated long back, however, he continued to be in possession by virtue of the orders obtained by him in series of Writ Petitions. Ultimately by order dated 26.9.2001 in W.P.No.20043 of 2001, this Court directed the respondents to permit the petitioner therein i.e., father of the writ petitioner, to cut and harvest paddy crop raised by him in the land in question and that he shall hand over possession of the land on or before 31.12.2001. It was also made clear that the Writ Petitioner therein shall file an undertaking in writing before the respondents before going to harvest the crop to the effect that he will vacate the land unconditionally and he will hand over vacant possession of the land by 31.12.2001 under any circumstances. Admittedly the said order has become final.

Now this Writ Petition is filed by the son of the said Akkina Surya Rao claiming that subsequently he was granted lese in respect of the land in question. His grievance is that while the lease in his favour is subsisting and he is continuing in possession, the 2nd respondent has been proceeding to grant leasehold rights in favour of third parties and to that effect the 2nd respondent has issued auction notice dated 1.4.2005. The contention of the Writ Petitioner is that the said procedure adopted by the 2nd respondent is contrary to the mandatory Rules issued under G.O.Ms.No.379

dated 11.3.2003.

On behalf of the 2nd respondent a counter-affidavit has been filed, in which it is stated that lease was never granted in favour of the Writ Petitioner and he is only a mere encroacher, and therefore, it is not necessary to follow the procedure contemplat4d under the Rules made under G.O.Ms.No.379 dated 11.3.2003.

I have heard the learned counsel for both the parties.

It is relevant to note that though the petitioner claims that he is a lessee in respect of the land in question and that he was put in possession by the 2nd respondent, no material has been placed before this Court to substantiate his claim. Though the learned counsel for the petitioner made an attempt to rely upon the receipt said to have been issued by the 2nd respondent-Temple dated 8.1.2005 in which a sum of Rs.4,100/- appears to have been collected from the petitioner, I am not inclined to accept the plea of the petitioner that the said amount was collected as *'maktha'* from the petitioner and that he is in occupation of the land in question as a lessee. In the said receipt it was mentioned that the amount was received towards charges for use and occupation.

Having regard to the facts and circumstances of the case and in the absence of any material to substantiate the claim of the petitioner that he is a lessee in respect of the land in question, I do not find any justifiable reason to issue a Writ of Mandamus as prayed for. The Writ Petition is misconceived, and therefore, liable to be dismissed.

The Writ Petition is accordingly dismissed. No costs.

However, it is made clear that this shall not preclude the petitioner to participate in the auction proposed to be conducted by the 2nd respondent-Temple, if he so chooses. Further, in case there is any standing crop on the land in question, it is open to the petitioner to make a representation before the 2nd respondent-Temple, in which event, the same shall be considered, in accordance with law and he may be permitted to harvest the crop.

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30th September, 2005.

Kgr

THE HON'BLE Ms. JUSTICE G. ROHINI

W.P.No.10086 OF 2005

30.09.2005.

Between:

A. Achutha Rama Rao. .. Petitioner.

And

The Governemnt of A.P.,

represented by its Secretary,

Department of Revenue (Endowments)

Secretariat, Hyderabad and another. .. Respondetns.